

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000289-001 DT

02/01/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

J. Eaton

Deputy

STATE OF ARIZONA

KENNETH M FLINT

v.

GREGORY RAY KROLIKOWSKI (001)

JEREMY PHILLIPS

SIMONE ANNE ATKINSON

REMAND DESK-LCA-CCC

SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number M-751-TR-2010-012133.

Defendant-Appellant Gregory Ray Krolikowski (Defendant) was convicted in Scottsdale Municipal Court of leaving the scene of a collision and failure to obey a police officer. Defendant contends the State did not present sufficient evidence to support the convictions. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On April 22, 2010, Defendant was cited for leaving the scene of a collision involving damage to a vehicle only, A.R.S. § 28-662(A)(2); and failure to obey a police officer, Scottsdale City Code § 19-13. At the trial in this matter, Alan Kuhn testified he was employed as a Security Guard for Scottsdale Healthcare on April 22, 2010. (R.T. of Aug. 31, 2011, at 6-7.) At about 1:30 a.m., he saw an SUV heading east on Scottsdale Healthcare Drive traveling faster than usual. (*Id.* at 7.) The vehicle turned right into the ambulance drive, and the driver left the vehicle and ran south into the desert. (*Id.* at 8-9.) Mr. Kuhn then called the Scottsdale Police to report the situation. (*Id.* at 10.) He observed the driver run south of Thomas Peak Parkway until he came upon a chain link fence. (*Id.* at 10-11.) Mr. Kuhn then returned to the vehicle to await the arrival of the police officers, and while there, noticed the two right-side tires were deflated. (*Id.* at 12.) After Office Menge had arrived, Mr. Kuhn noticed the person he had previously observed now walking north across Thomas Peak Parkway. (*Id.* at 13.) Office Menge approached the person, and that person then took off running east on Thomas Peak Parkway. (*Id.* at 14.) Office Menge and the other officers later returned with the person, and Mr. Kuhn said that person appeared to be the same person he had seen get out of the vehicle. (*Id.* at 15-16.)

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Officer Warren Menge testified he was dispatched to the area of Scottsdale Healthcare Thompson Peak on April 22, 2010, at about 1:30 a.m. (R.T. of Aug. 31, 2011, at 81–83.) When he arrived, he contacted Mr. Kuhn. (*Id.* at 83.) Officer Menge saw a Land Rover with two flat tires. (*Id.* at 84.) While talking to Mr. Kuhn, he saw a person coming from the area where Mr. Kuhn said he saw the driver running. (*Id.* at 84–85.) Officer Menge approached the person, identified himself as a Scottsdale Police officer, and asked the person if he was all right. (*Id.* at 85–86.) Officer Menge said he was 6' 7" tall and was wearing a police uniform, so it was quite apparent he was a police officer. (*Id.* at 88.) The person said, "I'm okay; my friend was driving." (*Id.* at 86–87.) Officer Menge told the person he needed to talk to him, but the person started to walk away, and then began to run away. (*Id.* at 87.) Officer Menge told the person at least three times he needed to stop, but the person looked back at him at least twice and kept running. (*Id.* at 88–89.) The person kept running until Officer Steel jumped out of his vehicle, ordered the person to stop, and handcuffed him. (*Id.* at 90.) As Officer Menge was getting the person's identification from his pocket, some keys fell out that were later identified as belonging to the Land Rover. (*Id.* at 91, 102.) Officer Menge identified Defendant as the person he had been chasing. (*Id.* at 92.)

Officer David Steel testified that, on April 22, 2010, at about 1:30 a.m., he received a call that a person had run into the desert after a collision. (R.T. of Aug. 31, 2011, at 41–42.) When he was south of Thomas Peak Parkway, he received a call that Officer Menge was in foot pursuit of the subject. (*Id.* at 44.) He traveled east on Thomas Peak Parkway until he saw them, drove past them, made a U-turn, put on his lights, and got out of his vehicle. (*Id.* at 45.) Officer Steel ordered the person to stop, which he did, and then Officer Steel handcuffed the person. (*Id.* at 45–46.) When Officer Steel examined the vehicle, he saw the two right-side tires were deflated, and he later located the place on the curb where the tires had hit. (*Id.* at 47–48, 51.)

Officer Eric Schwartz testified he was dispatched to the area of 7400 East Thomas Peak Parkway in the early morning of April 22, 2010. (R.T. of Aug. 31, 2011, at 60–61.) When he arrived at the location, Officer Menge and Officer Steel had already apprehended the subject. (*Id.* at 61.) He then contacted Mr. Kuhn, who advised there was video camera security footage, which he then viewed. (*Id.* at 62.) He identified Defendant as the person arrested that night. (*Id.* at 63.) He described the damage done to the vehicle's tires and to the curb. (*Id.* at 64–65.) The State presented testimony that Defendant was the registered owner of the Land Rover. (*Id.* at 71–72.)

Patrick "Alan" Kosecki testified he was a criminalist for the Scottsdale Police Department, and that he tested Defendant's blood, with the results showing Defendant had a BAC of 0.165 and 0.167. (R.T. of Aug. 31, 2011, at 118, 131–32.) He noted the blood was drawn at 4:10 a.m., and gave his opinion Defendant's BAC would have been higher than at 1:25 a.m. (*Id.* at 134.)

The State then rested, and Defendant's attorney made a motion for judgment of acquittal, which the trial court denied. (R.T. of Aug. 31, 2011, at 141–42.) Defendant testified and denied he was driving the Land Rover. (*Id.* at 158, 162–64, 167.) He admitted, however, he was the person Officer Menge and Officer Steel apprehended, and admitted he ran from Officer Menge, knowing Officer Menge was a police officer. (*Id.* at 159, 168–69.)

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The trial court found Defendant guilty of leaving the scene of a collision and failure to obey a police officer, and on January 4, 2012, imposed sentence. On January 5, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUE: DID THE STATE PRESENT SUFFICIENT EVIDENCE THAT DEFENDANT WAS GUILTY
OF THE TWO CHARGES.

Defendant contends the State did not present sufficient evidence that Defendant was guilty of the two charges. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor of sustaining the verdict.”

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). For leaving the scene of a collision, the statutes provide as follows:

A. The driver of a vehicle involved in an accident resulting only in damage to a vehicle that is driven or attended by a person shall:

1. Immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene.
2. Remain at the scene of the accident until the driver has fulfilled the requirements of § 28-663.
3. Make the stop without obstructing traffic more than is necessary.

A.R.S. § 28-662.

A. The driver of a vehicle involved in an accident resulting in . . . damage to a vehicle that is driven or attended by a person shall:

1. Give the driver’s name and address and the registration number of the vehicle the driver is driving.
2. On request, exhibit the person’s driver license to the person struck or the driver or occupants of or person attending a vehicle collided with. . . .

A.R.S. § 28-663. The testimony present showed Defendant was driving a vehicle that was involved in a collision that resulted in damage to that vehicle, and that Defendant did not remain at the scene of the collision until he had given his name and address and the registration number of the vehicle he was driving. The State thus presented sufficient evidence to show Defendant had violated the requirements of A.R.S. §§ 28-662 and -663.

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Defendant contends, however, A.R.S. §§ 28–662 and –663 only apply to collisions involving two or more vehicle, and thus they do not apply to a collision between a vehicle and property. To sustain Defendant’s argument, this Court would have to rewrite those statutes to read as follows:

A. The driver of a vehicle involved in an accident resulting only in damage to [another] vehicle that is driven or attended by a person shall:

1. Immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene.

2. Remain at the scene of the accident until the driver has fulfilled the requirements of § 28–663.

3. Make the stop without obstructing traffic more than is necessary.

A.R.S. § 28–662 (bracketed word added).

A. The driver of a vehicle involved in an accident resulting in . . . damage to [another] vehicle that is driven or attended by a person shall:

1. Give the driver’s name and address and the registration number of the vehicle the driver is driving [to the driver of the other vehicle or vehicles involved in the accident].

2. On request, exhibit the person’s driver license to the person struck or the driver or occupants of or person attending [the] vehicle collided with. . . .

A.R.S. § 28–663 (bracketed words added). This Court does not express an opinion whether those changes would or would not be beneficial, but notes it is only the province of the Arizona Legislature to add to or change the language of a statute. Under the facts of this case, Defendant was the driver of a vehicle involved in a collision resulting only in damage to a vehicle that was driven by him, thus he was required to stop immediately at the scene of the collision and remain there until he had given his name and address and the registration number of his vehicle to another person, which in this case would have been the police officers. The State thus presented sufficient evidence to show Defendant had violated the requirements of the statutes.

For the Scottsdale City Code offense, Defendant admitted he knew a police officer told him to stop and that he refused to do so and instead ran from the officer. State thus presented sufficient evidence to show Defendant failed to obey a police officer. Defendant seems to argue criminalizing that conduct violates the Fourth Amendment. For two reasons, this Court concludes Defendant is not entitled to relief on that claim. First, Defendant does not present any argument why that should be so, and thus this Court concludes Defendant has waived that argument. Second, to the extent Defendant has not waived that argument, this Court must presume a statute is constitutional, and this Court concludes Defendant has not overcome that presumption of constitutionality.

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III. CONCLUSION.

Based on the foregoing, this Court concludes the State presented sufficient evidence that Defendant was guilty of the two charges.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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